



May 13, 2021

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The Hon. Lewis A. Kaplan
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: Anthony Rapp and C.D. v. Kevin Spacey Fowler a/k/a Kevin Spacey
Southern District of New York, Case No. 1:20-cv-09586 (LAK)
Objection to Request for Informal Conference re Severance and Stay

Dear Judge Kaplan:

As Your Honor knows, we represent defendant Kevin Spacey Fowler. I write in response to the letter dated May 13, 2021 from Plaintiffs' counsel, Richard M. Steigman and Peter Saghir.

On behalf of Mr. Fowler, we oppose any request Plaintiffs may seek for severance under Federal Rule of Civil Procedure 21 or for a stay of Mr. Rapp's claims. Such requests are unnecessary, improper, and prejudicial to Mr. Fowler. To the extent Plaintiffs intend to request such relief from the Court, we believe Plaintiffs must file a noticed motion, which would allow the parties to appropriately address the matter with citations to legal authority and evidence. For this reason, we also object to Messrs. Steigman and Saghir's request for a premature conference with the Court.

As an initial matter, given C.D.'s failure to amend the complaint as ordered by the Court and his continuing violation of Federal Rule of Civil Procedure 10, we agree C.D.'s claims must be dismissed. Given C.D.'s stated non-opposition to dismissal, we respectfully request the Court *sua sponte* issue an order dismissing C.D.'s claims ***with prejudice*** under Federal Rule of Civil Procedure 41(b). To the extent the Court feels a formal motion is required to effectuate an involuntary dismissal, we will file such a motion, which we understand would be unopposed. To guard against any gamesmanship, and the prejudice that would result therefrom, Mr. Fowler opposes any attempt by C.D. to dismiss his claims without prejudice.

After the dismissal of C.D.'s claims is entered, Plaintiffs can file a formal motion for severance and/or a stay of Mr. Rapp's claims. These requests raise substantive issues of law that must be filed by noticed motion. *See* S.D.N.Y. Local Rules 6.1, 7.1. We believe severance would be improper, prejudicial, and unnecessary, but the matter can be properly addressed only if Plaintiffs make a properly noticed motion.

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Likewise, Plaintiffs' suggestion that Mr. Rapp's claims should be stayed is without merit. Mr. Fowler filed an Answer to Plaintiffs' claims in November 2020. The parties have exchanged initial disclosures and begun expert discovery. Four depositions have been taken relating to Mr. Rapp's claims, with at least two more third-party witnesses scheduled for deposition later this month. Plaintiffs' counsel themselves recently opposed our request for modest continuances of pre-trial deadlines given our inability to fully investigate or conduct discovery as to C.D.'s claims. At that time, Plaintiffs' counsel claimed no opposition to certain pre-trial deadlines being extended as they relate to C.D., but he opposed any delays in the prosecution of Mr. Rapp's claims.

Mr. Fowler consistently has denied Plaintiffs' claims. An indefinite stay of this case irreparably harms Mr. Fowler by delaying his ability to have his day in court so he can clear his name. And it only exacerbates the unwarranted reputational and professional harm he has suffered, and will continue to suffer, in the interim.

For these reasons, we respectfully request the Court decline Messrs. Steigman and Saghir's invitation to hold a conference at this time. Instead, the Court should enter an order dismissing C.D.'s claims with prejudice. To the extent Plaintiffs intend to seek severance and/or a stay, they should file a noticed motion, and Mr. Fowler will oppose it on the merits.

Respectfully submitted,
KELLER/ANDERLE LLP



Chase A. Scolnick

cc: Richard M. Steigman
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